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IN THE  
**Supreme Court of the United States**

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No.

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TEXAS STATE LIFE INSURANCE COMPANY, *et al*,  
*Petitioners,*

*vs.*

SEBE J. HOUGHTON, JR.,  
*Respondent*

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*On Petition for Writ of Certiorari to the United States  
Circuit Court of Appeals for the Fifth Circuit.*

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**PETITION**

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*To the Honorable Fred M. Vinson, Chief Justice, and the  
Associate Justices, of the Supreme Court  
of the United States.*

Your Respondents respectfully show:

**1. The Issue**

There is here presented the single clear cut issue on whether or not a Veteran returning from the Army is entitled to be restored to his former position, or one of like status and pay, when such position is the presidency of a corporation and elected, subject to change by the stockholders of said corporation, from year to year.

The question is whether or not in a proceeding under subsection (e) of Section 308, Title 50, Appendix, U. S. C. A., an elective position by the stockholders of a corporation is a temporary one.

The further question is whether or not when the status of a corporation has so changed to the extent that it becomes unreasonable for the reinstatement of such an employee that he is still entitled to such employment for a period of one year under the above named statute.

## **2. The Statutory Law**

The statute involved is subsection (e) of Section 308, Title 50, Appendix, U. S. C. A.

## **3. The Decisions in the Courts Below**

The opinion of the District Court for the Northern District of Texas is reported in 68 F (s) 21.

The opinion of the Circuit Court of Appeals is reported in 166 F (2nd) 848.

The order denying motion for re-hearing was entered on April 15, 1948.

## **4. The Procedure**

Very briefly the pertinent proceedings were as follows:

The petitioner filed his petition under subsection (e) of Section 308, Title 50, Appendix, U. S. C. A.

The defendants filed their answer alleging the defendant to be an insurance company duly organized and operating under the laws of the State of Texas; and further alleging that the position was a temporary one and that the status of the company had so changed as to render the re-employment of the petitioner, Houghton, unreasonable.

Judgment of the District Court for the defendants was entered on the 3rd day of October, 1946.

Petitioner appealed to the Circuit Court of Appeals and judgment reversing the judgment of the District Court was entered on March 1, 1948.

A motion for re-hearing was denied on April 15, 1948.

#### **5. Statement of the Basis of the Jurisdiction of this Court**

The jurisdiction of this court is conferred by 28 U. S. C. A. 347 (a).

The judgment of the court below was entered on March 1, 1948 and became final on April 15, 1948, when the petition for re-hearing was denied. This petition for certiorari is filed within three months thereafter.

#### **6. The Questions Presented**

The petition for a writ of certiorari presents the following questions:

1.

Is the office of president of a state corporation where same is elective from year to year a temporary one?

2.

Has the court the right to decree that the office of president or directors of a state corporation is one that the court has jurisdiction over?

3.

Is an elective position of a corporation a temporary one?

4.

Is the payment of a year's salary in an elective position in compliance with subsection (e) of Section 308, Title 50, Appendix, U. S. C. A.?

**7. Reasons For Allowance of The Writ of Certiorari  
Prayed For**

1.

An important question is involved as to the meaning of an Act of Congress.

2.

There is conflict of decisions among the federal courts.

3.

The important question of whether or not the courts have power to dictate who shall be the officers of a state corporation is involved.

4.

There is involved the question whether, when the status of a corporation has so changed that the restoration of an employee is unreasonable, the court has a right to force a state corporation to restore an employee.

Wherefore, we pray that a Writ of Certiorari issue to the Appellate Court below directing it to certify and send to this court a transcript of the record and the proceedings thereon so that this cause may be determined by this court and for all other proper relief.

ROSS CARLTON,  
*Dallas, Texas*

O. M. STREET,  
*Dallas, Texas*

*Counsel for Petitioners*

Dallas, Texas,  
June 28, 1948.

IN THE  
**Supreme Court of the United States**

No.

TEXAS STATE LIFE INSURANCE COMPANY, *et al*,  
*Petitioners,*

*vs.*

SEBE J. HOUGHTON, JR.,  
*Respondent*

*On Petition for Writ of Certiorari to the United States  
Circuit Court of Appeals for the Fifth Circuit.*

**BRIEF**

**IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.**

The Subject Index precedes the Petition for Certiorari.  
All emphasis is supplied unless otherwise stated.

1.

**The Report Of The Decision Below**

The opinion of the District Court for the Northern District of Texas is reported in 68 F (s) 21.

The opinion of the Circuit Court of Appeals is reported in 166 F (2nd) 848.

The order denying motion for re-hearing was entered on April 15, 1948.

## 2.

The basis for the jurisdiction of this court has been stated at page 3 of this petition for Certiorari.

## 3.

**STATEMENT OF THE CASE**

The petitioner, Houghton, seeks to be re-instated as president of Texas State Life Insurance Company, a State Corporation, under subsection (e) of Section 308, Title 50, Appendix, U. S. C. A.

The petitioners here seek to avoid such restoration on the grounds that his position was a temporary one and that the status of the corporation has so changed that such restoration is unreasonable.

**4. A Fuller Statement**

The petitioner, Houghton, filed his petition in the District Court alleging for jurisdiction subsection (e) of Section 308, Title 50, Appendix, U. S. C. A., that on April 23, 1942 he was director and president of petitioner corporation at a salary of \$4800.00 per year; that on April 23, 1942 he was inducted into the United States Army; that on December 15, 1945 he was on terminal leave from the United States Army and that he is entitled to be restored to the position that he held when in the employ of the petitioner corporation at the time he entered the United States Army, or to a position of like status, seniority and pay.



The petitioner corporation alleged and proved that it was a corporation life insurance company, organized and operating under the laws of the State of Texas, with its principal office and place of business in Dallas, Dallas County, Texas; that its stock is owned by various people throughout the State of Texas as well as other states. As approved by the laws of the State of Texas, the stockholders elect annually a Board of Directors who in turn elect from their number, its officers, among which is its president. That at a called meeting of its Board of Directors on April 15, 1946, said Board, by resolution duly made and adopted, refused to restore the plaintiff, Houghton; that said reasons for refusing the restoration were that the position of the president was an elective one from year to year as provided by its By-Laws and that the status of the corporation has so changed that the restoration would be unreasonable and impossible.

### 5. Specification of Errors

#### 1.

The payment of a year's salary is not in compliance with subsection (c) of Section 308, Title 50, Appendix, U. S. C. A. The court below refused to take into consideration the proposition that an elective position in a state corporation is a temporary one.

#### 3.

The court below failed to pass upon the proposition that an elective position in a state corporation is a temporary one.

#### 4.

The court below refused to consider the proposition that the position of an officer of a corporation where elected from year to year is a temporary position.

## 6. ARGUMENT

The appellee is a life insurance company, organized and incorporated under the laws of the State of Texas.

The Revised Civil Statutes provide that the stockholders of an insurance corporation shall elect its directors and that such directors shall elect its officers. (R. C. S., Articles 4708 and 4711.) The by-laws of said corporation provide that the officers of said corporation shall be elected annually. The appellant in this case was elected president and director at its March meeting in 1942. He was called to active duty during the month of April, 1942, and he continued in this position until the next annual meeting of the stockholders, at which time he was not reelected as director, neither was he reelected president.

The testimony shows that the appellant was entirely out of harmony with the directors and stockholders of this company at the time he left to enter the armed services.

In the case of *McClayton v. W. B. Cassell Company*, 66 Fed. Supp. 165, Judge Chesnut of the District Court of Maryland passed on a very similar situation in which appellant McClayton had had a history of employment similar to appellant herein. Judge Chesnut, in the *McClayton* case said:

"First vice-president in active charge of business corporation whose duties were prescribed by by-laws and whose salary was fixed by directors and who had no contract of employment, was not an 'employee' of corporation within statutes providing for reemployment of discharged veterans.

"First vice president in charge of business corporation, continued to hold his position at least seven months after entering upon active duty in naval reserve and was removed from office because of activities prejudicial and disloyal to corporation and was not entitled to restoration to office under statutes providing for reemployment of discharged veterans."

Judge Chesnut further said:

"The respondent contends that the position which the petitioner held in December, 1943 was only a *temporary* one in that he had previously been elected as first vice-president of the corporation for a limited period only, that is to say, until the next annual stockholders' meeting to elect new directors who in turn would select for the succeeding years the officers of the corporation. More specifically, it is pointed out that under the Maryland corporate law annual stockholders' meetings are to be held, at which time the directors are elected to serve for the ensuing year. In turn the new Board of Directors elects its own officers. Therefore, it is said that the petitioner was elected to his position as first vice-president of the corporation for only a limited period of one year, and therefore held only a temporary position."

The position in the instant case to which respondent seeks restoration is not that of simple reemployment. It is an elective position. A position which must be filled through such election by the requirements of the provisions of the charter of the corporation and the insurance laws of the State of Texas.

The case of *Trusted Funds, Inc. v. Dacey*, 66 F (s) 321.

"One further matter needs to be mentioned, since the case will go back for a new trial. As previously stated there was some evidence that Dacey, when he saw Griffith in June, 1945, insisted not only upon reemployment in the former position he had held under the expired contract, but also, upon being reinstated as director and vice-president. There might be some question whether an elective officer in a corporation, such as the vice-president, has a position 'in the employ' of the corporation, within the meaning of Sec. 8. See *McClayton v. W. B. Cassell Co.*, supra, 66 F. Supp. at pages 171, 172; *Houghton v. Texas State Life Ins. Co.*, D. C. N. D. Texas 1946, 68 F. Supp. 21. We need not decide this, inasmuch as Dacey has not cross-appealed from the judgment because of its not having ordered his reinstatement as vice-president. But certainly a

director would not in the ordinary usage be regarded as 'in the employ' of the corporation, and we believe it to be clear that a director, as such, is not given reemployment rights under the Act. The testimony just referred to related to an alleged demand by Dacey in preliminary negotiations before he had been released from the Army. Whether in his formal application for reemployment after his discharge, Dacey maintained his insistence upon being reinstated as a director, we do not know. If he did so, a question would be presented as to the legal effect on his statutory rights of having demanded more than he was entitled to, assuming for present purposes he was otherwise entitled to something."

Petitioners contend that the circumstances of respondent corporation have materially changed during respondent's absence and that it would be unreasonable to require said corporation to reemploy respondent either in the positions formerly held by him or in one of like seniority, status and pay.

Petitioners further contend that the position held by the respondent at the time of his entering military service was a temporary position and that he was not an "employee" within the meaning under the Selective Service Statutes.

ROSS CARLTON,  
O. M. STREET,

*Attorneys for Petitioners*

### CONCLUSIONS AND PRAYER

For the reasons given the petitioners pray for a Writ of Certiorari to the Fifth Circuit Court of Appeals.

Respectfully submitted,  
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Texas State Life Insurance  
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